IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO. 8 OF 1999.
WITH
CROSS OBJECTION NO. 1 OF 1999.

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1. Government of Goa through
   its Chief Secretary,
   Secretariat, Panaji.
2. Deputy Collector (Rev.),
   Collectorate, Panaji. ... Appellants.

Versus

M/s. Agrawal Minerals (Goa)
Pvt. Ltd., o/at Anant Bhuvan,
Station Road, Margao through
its Director Shri Purushottam
R. Kejriwal, r/o Margao. ... Respondent.

Mr. H.R. Bharne, Government Advocate for the Appellants.

Mr. V.B. Nadkarni, Senior Advocate with Mr. J. Cardoso,
Advocate for the Respondent.

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Advocate for the Appellant.

Mr. H.R. Bharne, Government Advocate for the
Respondents.

Coram : P.V. HARDAS AND
D.G. KARNIK, JJ.

Date : 16th March 2004.

ORAL JUDGMENT (PER HARDAS, J.)

The appellants, being aggrieved by the Judgment and Award, dated 10th November 1997, passed by the District Judge, Panaji, in Land Acquisition Case No. 39 of 1993, have filed the present appeal. The respondent to this First Appeal has filed his Cross Objection. The Appeal and the Cross Objection are, therefore, being dealt with by this Judgment.

2. The facts in brief, as are necessary for the decision of this appeal, are stated hereunder:-

The Government issued a Notification under Section 4 of the Land Acquisition Act, which was published in the Official Gazette, dated 14th September 1990, for acquisition of an area of 27,685 square metres of land belonging to the respondent herein. The land in respect of which the Notification under Section 4 was issued comprised of P.T. Sheet No. 176, Chalta Nos. 6, 7, 8 and 9, situated at Caranzalem in City Survey of Panaji. The acquisition of the said land was for setting up of National Institute for Water Sports at Caranzalem. After the issuance of the declaration under Section 6 and after completion of the formalities under the Land Acquisition Act, the Land Acquisition Officer awarded compensation, for the acquisition of land, at the rate of Rs. 200/- per square metre. The respondent/owner had claimed the rate of Rs. 1,000/-

per square metre. On a reference being made under Section 18 of the Land Acquisition Act, the learned District Judge, Panaji, framed the following issues:-

> "1. Whether the applicant proves that the market value of the land as on the date of Notification under Section 4 was Rs. 1,000/- per sq. metre?
>
> 2. Whether the applicant proves that they are entitled for compensation being non-user of land amounting to Rs. 75,000/- for the period from 14.9.90 to 22.2.91?
>
> 3. Whether the applicant proves that the measurements as shown in the acquisition plan are not correct and that the acquiring authority has taken possession of an area of 694 sq. metres than what has been actually acquired?
>
> 4. Whether the applicant proves that they are entitled to receive the amount of Rs. 28,250/- and Rs. 1,05,942/- concerning the property surveyed under No. 9/2 and 9/3 deposited by the acquiring authority as Revenue Deposit?"

3. In respect of the first issue, the learned District Judge, Panaji, held that the market price of the land excluding survey nos. 176/8/3, 176/7/1, 176/6/5, 176/8/5, 176/9/2, 176/9/3 and 176/7/4 is fixed at Rs. 310/- per square metre. The market price of the land which is excluded above would be Rs. 310/-, if they are shown not to be tenanted lands and if they are shown to be tenanted lands, the respondent/owner would not be entitled to any enhancement. In respect of issue nos.2 to 4, the learned District Judge returned a

finding in the negative.

4. The respondent/owner examined Devidas Kudchadkar as A.W.1, Vasanti Vagle as A.W.2 and Subhash Chandra Narayan Bhobe as A.W.3.

5. A.W.1 Devidas Kudchadkar states that he is the holder of Power of Attorney on behalf of the respondent/owner. The Power of Attorney so produced is at Exhibit A.W.1/A. According to him, the land of the respondent/owner, which is hereinafter referred to as 'the suit land' for the sake of convenience, has on one side Panjim Dona Paula Road and on the other River Mandovi. The suit land is at a distance of 4 kilometres from Panaji City by road and is at a distance of 1 to 1 1/2 kilometres from Miramar Circle. The suit land is at road level and is suitable for construction of a luxury hotel, bungalows, flats, etc.. Thus, a rate of Rs. 1,000/- per square metre was claimed. In the cross-examination he has admitted that the suit land is an agricultural land. In the survey records some tenants are shown in the suit land. He has admitted that there is a reference under Section 30 pending in the Court at the behest of some tenants in respect of the suit land. He has admitted that the Valuer Shri S.N. Bhobe had taken inspection of the suit land in 1994. He has denied the suggestion that the suit land

is not suitable for construction of bungalows etc.. He has stated that he does not know if the distance between the Panaji Ferry Wharf and the suit land was 7 kilometres.

6. A.W.2 Vasanti Vagle had produced the Sale Deed, dated 11th July 1990, under which she had purchased 290.50 square metres of land at the rate of Rs. 600/- per square metre. A certified copy of the Sale Deed is at Exhibit A.W.2/A. The land purchased by her is situated at Dona Paula in front of the Cancer Hospital. The land is rocky but situated in a residential area and is situated at a distance of 1 kilometre from the NIO Circle. According to her the suit land is at a distance of less than one kilometre from the land purchased by her. In the cross-examination she has admitted that the plot purchased by her was a part of a sub-divided plot developed by Goa Cancer Hospital. That development was duly approved by all the parties. She had given the distance by approximation. She was put a question that her plot is one and a half kilometre from NIO Circle. To which she replied 'it is walkable distance'. She has stated that she does not know the exact distance of the suit land from NIO Circle.

7. A.W.3 Subhash Chandra Narayan Bhobe states

that he had prepared the valuation report at Exhibit A.W.3/A. According to him the suit land is part of a bigger property situated about 100 metres away from NIO Circle towards Caranzalem side, that is, at a distance of 5 kilometres from Panaji City area. It is at a distance of 150 metres from Caranzalem beach. According to him, towards the western part of the suit land there are residential houses. Water and electricity lines are passing through the bigger portion of the property, that is, outside the suit land. According to him, the suit land is fit more particularly for a hotel or beach resort due to its size and nearness to the beach and specially as it has the view of the sea. The Dona Paula Jetty is close by. He has taken into consideration the Sale Deed at Exhibit A.W.2/A and, accordingly, valued the suit land at Rs. 1,000/- per square metre as on the date of acquisition. In the cross-examination he has admitted that the suit land as per the revenue records is an agricultural land. There were some tenants in the suit land but he was unable to give what was the part of the suit land where there are tenants. He has further admitted that in the suit land some portion was under cultivation. He has admitted that he did not consider the aspect of tenancy while fixing the valuation of the suit land. He has also admitted that he has not come across any Sale Deed for Rs. 1,000/- per square metre in the vicinity of the suit land at the relevant time.

8. The learned reference Court after appreciating the evidence of the witnesses of the respondent/owner came to the conclusion that the suit land was shown to be having potentiality for construction purpose. The learned reference Court then excluded one third of the area on account of development and taking into consideration that the suit land was about 50 to 60 cms. below the road level, therefore, deducted 5%. The learned reference Court also deducted 10% in respect of sale instance at Exhibit A.W.2/A on account of the large area of the suit land and arrived at the market price of the suit land at Rs. 310/- per square metre. The learned reference Court, therefore, deducted in all 48 1/3% from the sale instance of Rs. 600/- per square metre and arrived at the said rate of Rs. 310/- per square metre. The learned reference Court then further deducted 20% in respect of the tenanted land and worked out the market value of those tenanted portions at Rs. 190/- per square metre.

9. In the Cross Objection which is filed the principal point that is urged is that the reference Court ought to have deducted 25% on account of development of the land instead of deducting one third area. In the Cross Objection it is also stated that the deduction of 10% on account of largeness of the suit land is also unwarranted, as also the market rate

determined by the reference Court.

10. Mr. Bharne, the learned Government Advocate appearing on behalf of the appellants, has urged before us that the learned reference Court was wholly incorrect in taking into consideration the Sale instance at Exhibit A.W.2/A. According to the learned counsel for the appellants, the sale instance at Exhibit A.W.2/A was in respect of firstly a smaller plot, secondly a developed plot and thirdly situated in a residential area. The suit land, admittedly, was not firstly situated in a residential area and secondly was extremely large as compared to the land under the Sale instance and, therefore, the sale instance could not have been applied for finding out the market value of the suit land.

11. Mr. Nadkarni, the learned senior counsel, opposing the submission of the appellants, has stated that the Land Acquisition Officer in his Award has held that the suit land had building potentiality and, therefore, the sale instance at Exhibit A.W.2/A would be a strong indicator/pointer for determining the market value of the land. He has further urged that the Government cannot advance any submission counter to the findings recorded by the Land Acquisition Officer in respect of the nature of the land or the suitability of

the land for a particular purpose. He has also submitted that merely because the suit land is an agricultural land that would not mean that the suit land does not have building potentiality. Mr. Nadkarni has placed reliance in the Judgment of the Apex Court in **Union of India & Anr. v. The Special Land Acquisition Officer & Ors.,** JT 1996 (8) S.C. 288.

12. The Apex Court in **State of Maharashtra and others v. Digamber Bhimashankar Tandale and others,** (1996) 2 S.C.C. 583 in paragraph 4 has held as under:-

> " The following factors must be etched on the mental screen:
>
> (1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.
>
> (2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by the Court unless produced and proved before it. It is not the function of the court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.
>
> (3) The Court has to treat the reference as an original proceeding

> before it and determine the market value afresh on the basis of the material produced before it.
>
> .....
>
> (9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.
>
> (10) The most comparable instances out of the genuine instances have to be identified on the following considerations:
>
> (i) proximity from time angle
>
> (ii) proximity from situation angle.
>
> (11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition."

In the said report the Apex Court has also pointed out certain minus factors which are largeness of area, situation in the interior at a distance from the road, narrow strip of land with very small frontage compared to depth, lower lever requiring the depressed portion to be filled up, remoteness from developed locality and some special disadvantageous factor which would deter a purchaser.

13. Mr. Nadkarni, the learned senior counsel

appearing on behalf of the respondent/owner, has referred to the Judgment in Union of India & Anr. v. The Special Land Acquisition Officer & Ors. (Supra) and particularly the observation of the Apex Court in paragraph 2 of the Judgment, which reads as under:-

> "...As far as the first point is concerned, we find absolutely no merit. The award of the Collector is an offer made on behalf of the State and, therefore, under law, the State cannot question the correctness of the award determined by the Land Acquisition Officer. The State is bound by the same. Under these circumstances, they cannot impeach the award of the Collector as being excessive of the prevailing market value as on the date of the notification."

14. The Land Acquisition Officer in paragraph 17 of his Award has held as under:-

> "Due to long passage of time most of lands surrounding the area have been developed thereby mushrooming by constructional activities and as a result the potentiality of the lands have been increased enormously."

The Award of the Land Acquisition Officer further makes a reference to the existence of a Bar and Restaurant near the suit land. The learned reference Court also, after appreciating the evidence, has recorded a finding that the suit land was having potentiality for construction purpose. The evidence on record indicates that in the vicinity of the suit land residential houses

have come up and also there is a Bar and Restaurant and, therefore, the finding of the learned reference Court on that count cannot be faulted.

15. We have, therefore, to examine whether the market value of the land at Rs. 310/- fixed by the reference Court is a proper assessment of the market value of the land. Mr. Nadkarni, the learned senior counsel appearing on behalf of the respondent/owner, in support of the Cross Objection has placed reliance on the Judgment of the Apex Court in **Kasturi and others v. State of Haryana**, 2002 AIR SCW 4644. Reliance is placed particularly on the observations of the Apex Court which are reproduced below:-

> "A claimant who claims that this land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that areas adjoining his land is developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land character of a developed area. In 84 acres of land acquired even if one portion of one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities etc.. However, in cases of some land where there are certain advantages by virtue of the developed area around, may help in reducing the percentage of cut to

> be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be some cases it is more than 1/3 and in some cases less than 1/3. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose.
>
> The claimants did not establish that the entire area of 84 acres of land acquired was fully developed having all the facilities such as roads, drains, sewers, water, electricity lines and civic amenities. In order to convert the land into plots for the purpose of construction of residential and commercial buildings certain area was to be earmarked for the above mentioned purposes in accordance with the law governing in the matter of creating layouts in addition to incurring of expenditure for the development area. Hence the claim of the claimants that there should have been no deduction out of the compensation amount determined for the entire area acquired is unsustainable. Taking note of the aspect that the acquired land with potentiality for construction of residential and commercial buildings had some advantages, giving cut of only 20% as against 1/3 normal deduction, is proper.".

On the basis of the observations of the Apex Court, reproduced above, it is urged by Mr. Nadkarni, learned senior counsel appearing on behalf of the respondent/owner, that the learned reference Court ought

to have deducted an area of either 20 or 25% towards the development instead of one third area.

16. The Judgment of the Apex Court on which strong reliance is placed by Mr. Nadkarni, according to us, does not apply to the facts of the present case. In the aforesaid Judgment of the Apex Court the area that was acquired was 84 acres and on the evidence on record the Apex Court upheld the deduction of 20% as against the one third normal deduction. In the present case the acquired land was, admittedly, an agricultural land and though it is situated near the Panaji City, the suit land was not a developed land. Also there is no evidence in respect of the development of adjoining lands. Though residential houses are shown to be existing near the suit land, yet there is no evidence in respect of development in the area around the suit land. Admittedly, the suit land has building potentiality in the sense that the suit land can be developed and used for building purposes. The learned reference Court was, therefore, according to us, right in deducting one third area for development. The sale instance at Exhibit A.W.2/A is in respect of land admeasuring 290.50 square metres. The suit land is extremely vast as compared to the land in the sale instance. Smaller pieces of land and specially a developed plot would obviously fetch more price than a larger tract of undeveloped land.

Therefore, the sale instance in respect of a small piece of plot cannot be fully applied in respect of a large tract of land. The learned reference Court has taken into consideration that aspect and after the deductions, which have been referred to by us, has determined the market value of the land at Rs. 310/- per square metre. In the background of the evidence on record, the plea of the respondent/owner that the market value of the land is at Rs. 1,000/- per square metre is outrageous.

17. We have given our anxious consideration to the rival contentions and, according to us, the reference Court has correctly judged the market value of the suit land. Ofcourse some element of guess work is necessary as there is no formula which would adequately judge the market value of the land. Various factors like tenants, largeness of the area, etc., lower the price which a willing purchaser would give for the land. However, the learned reference Court, according to us, taking into consideration the various factors, has rightly arrived at Rs. 310/- per square metre, being the market price of the land. Therefore, according to us, the Judgment and the Award of the learned reference Court cannot be faulted and needs no interference in the First Appeal at the instance of the appellants and in the Cross Objection at the instance of the respondent/owner. Accordingly, the First Appeal and the Cross Objection

are dismissed. In the circumstances, there shall be no order as to costs.

(P.V. HARDAS)
JUDGE.

(D.G. KARNIK)
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